

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 261 of 1997

with

SPECIAL CIVIL APPLICATION NOS. 5058 TO 5151 OF 1997.

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

KESHAVLAL MEGHJIBHAI WAGHELA

Versus

AMC

Appearance:

MR BM MANGUKIYA for Petitioners

MR RR MARSHALL for Respondent.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/10/97

ORAL JUDGEMENT

Rule. Mr RR Marshall waives service of Rule for
the respondent.

2. These petitions are filed by persons who were
earlier occupying hutments and thereafter were allotted

flats by the respondent - Corporation. The Corporation has been charging rent from them, but in view of the fact that there are hundreds of such flats and the amount of rent is paltry and the Corporation has insurmountable administrative difficulties in collecting the rent from a large number of them, the Corporation has prepared a scheme for selling away the flats at low prices ranging between Rs. 5,000/- and Rs. 8,000/- in all for a flat with one room, one kitchen, toilet, bath-room and balcony. The scheme further provides that those who are not prepared to go for purchase of the flats at the aforesaid rates, will have to pay monthly rent of Rs. 300/- per month and municipal taxes at Rs. 250/- per month. The petitioners have challenged the aforesaid decision contending that the petitioners are tenants and the respondent - Corporation could not have increased the rent from Rs. 42/- to Rs. 300/- + taxes making it an aggregate amount of Rs. 550/- per month.

3. At the hearing of the petitions, Mr HM Mehta, learned senior advocate with Mr Mangukia have submitted that merely because the properties belonging to the respondent Corporation are not governed by the provisions of the Bombay Rent, Hotel and Lodging Houses Rate Control Act, 1947, it does not mean that the respondent Corporation can act arbitrarily and jack up the rent from Rs. 42/- per month to Rs. 550/- per month. Reliance is placed on the decision of the Apex Court in the case of M/s Dwarkadas Marfatia & Sons. v. Board of Trustees, Bombay Port, AIR 1989 SC 1642.

4. In response to the notice issued by this Court, an affidavit in reply has been filed by the Deputy Secretary, Rent Estate (W.Z) of the respondent Corporation raising a preliminary contention that the petitions involve disputed questions of fact and, therefore, the petitions should not be entertained under Article 226 of the Constitution. It is further submitted that the question of reasonableness or otherwise of the rent proposed by the respondent - Corporation is a question which cannot be gone into a writ petition under Article 226 of the Constitution.

5. It is further pointed out in the affidavit in reply that the Corporation had allotted flats with one room, kitchen, toilet, bath-room and balcony on rent to about 700 persons in 1963. There is no dispute about the fact that initially the rent was Rs. 15/- per month and thereafter it was increased to Rs. 42/- per month, but

the Corporation found that on the one hand, a number of persons were not paying the rent and the Corporation was finding it almost impossible to recover rent from so many incumbents and in a number of cases the rent remained unpaid for a number of years and unnecessary legal proceedings were required to be initiated and for a number of years the Corporation could neither get the rent nor possession of the flats. On the other hand in a number of cases, the occupants were selling away the flats to other persons at Rs. 50,000/ to Rs. 1,00,000/and, therefore, the intended purpose of the original allotment was being frustrated. Hence, the Corporation has prepared the present scheme which is impugned in the present petition. Under the scheme, the Corporation has decided to give away the flats in question for a paltry amount of Rs. 8,000/-, Rs. 7,000/-, Rs. 6,000/- and Rs. 5,000/- for flats on ground floor, first floor, second floor and third floor respectively. It is only if the allottee does not exercise the option of purchase that the allottee will have to pay the monthly rent of Rs. 300/+ municipal taxes which works out to Rs. 250/- per month. The scheme has a two fold objective. Firstly, to see that the Corporation gets out of the administrative difficulties and expenses of recovering the rent and management and maintenance of the properties as it is not economically viable to maintain or even to repair the properties out of the amount of the rent even if all the occupants regularly pay the present rent of Rs. 42/- per month. Since a large number of occupants have not been paying the rent regularly, the administrative machinery of the Corporation is unnecessarily bogged down in issuance of notices, initiating the eviction proceedings, etc. The other object of the scheme is to see that the poor people who are present tenants become owners of these flats at reasonable prices and, therefore, the flats are to be sold away to the allottees at ridiculously low prices between Rs. 5,000/- and Rs. 8,000/-.

6. It is further submitted in the affidavit-in-reply that 70% of the occupants had already taken away the flats on ownership basis before filing of these petitions and that the petitions are not filed by all the remaining allottees but by about 100 persons.

At the hearing of the petitions, it is further pointed out that even out of the original petitioners, about 50 persons have already exercised the option and have purchased their respective flats in question and the question remains for only about 50 to 100 persons out of

the original 700 allottees.

7. I have heard the learned counsel for the parties.

It appears that the petitioners are trying to challenge the decision of the respondent - Corporation of increasing the rent in isolation without appreciating that the decision to increase the rent is only a part of the entire scheme which is evolved for rational and reasonable objectives. Originally the petitioners were hutment dwellers who had encroached upon public streets and lands. The public streets were required to be cleared of those encroachments and, therefore, the Corporation offered them alternative accommodation. That event took place about 30 years back. Initially, the Corporation was charging them rent at a low rate of Rs. 15/- per month which was subsequently increased to Rs. 42/- per month. The Corporation has, therefore, taken into account the relevant factor that the rent being collected at such low rate is not sufficient to maintain the properties or even to carry out the repairs. Since the rents were being collected at such low rates, the municipal taxes being required to be paid by such occupants were also much smaller amounts and still the Corporation has been supplying all the civic amenities like water supply, drainage, street lights etc. The petitioners and other occupants have enjoyed occupation of the flats as well as enjoyed all the civic amenities over last more than three decades. However, many of the occupants did not pay rent regularly and some of them did not pay rent for years. It is in the background of these facts and circumstances that the legality and validity of the scheme as a whole is required to be examined and not merely a part thereof to increase the rent as such, in isolation. The flats are offered for outright sale to the allottees who pay the amount ranging from Rs. 5,000/- to Rs. 8,000/- for a flat with one room, kitchen, toilet, bath-room and balcony. The Corporation is, therefore, right in contending that the flats are being offered at a very low price to enable the allottees to become owners at even less than moderate prices. Now the purpose of the scheme would not be fully achieved if all the occupants do not exercise the option of purchase. The very nature and purpose of the scheme envisages that all the allottees must purchase the flats in question otherwise even if a small number of allottees continue to remain tenants, the administrative difficulties of the Corporation as pointed out and highlighted above, would continue to subsist and the administrative machinery of the Corporation would still be required to be employed for collection of rent, initiation of eviction proceedings, maintenance and repairs of flats, etc. The

increase of rent from Rs. 42/- to Rs. 300/- exclusive of municipal taxes is, therefore, meant to induce the allottees to go for purchase of the flats instead of remaining as tenants. The decision of the Corporation, therefore, cannot be stigmatized as arbitrary or unreasonable. If the Corporation wants to get out of the management and maintenance of the properties by selling away the flats at such ridiculously low price, the benefit is given to the allottees rather than to anyone else.

8. Mr Mehta has submitted that some of the petitioners are so poor that they could not afford to pay the price ranging from Rs. 5000/- to Rs. 8000/- and, therefore, they will have to be continued as tenants of the flats in question. They would find it impossible to pay Rs. 300/- + municipal taxes of Rs. 250/aggregating to Rs. 550/- per month. It is submitted on their behalf that merely because the Corporation has some administrative difficulties in recovering the rent, the petitioners cannot be compelled to purchase the flats. While appreciating the difficulties being pointed out on behalf of some of the petitioners, the Court cannot be oblivious of the fact that merely in order to continue a few allottees as tenants on account of their personal difficulties, the Corporation cannot be expected to be saddled with management, maintenance and repairs of the properties and be bogged down in collection of rent and other avoidable administrative work. In order to get out of this impasse, the Court has, therefore, thought it fit to direct the respondent Corporation to give such allottees instalments for paying the purchase price so as to see that the purpose of the scheme is served and only the period of implementation of the scheme is extended for a year or so beyond which the Corporation has intended to implement the scheme.

9. In view of the above discussion, while holding that the scheme framed by the respondent - Corporation does not suffer from any vice or arbitrariness or violation of any constitutional or legal provision and that increase of the rent from Rs. 42/- to Rs. 300/per month exclusive of municipal taxes is not a decision to increase the rent arbitrarily, but it is an inseparable part of the scheme framed by the Corporation for selling out the flats to the allottees at very low prices, in the facts and circumstances of the case, it appears to the Court that the interests of justice require issuance of the following directions :-

(i) By November 30, 1997, all the persons who are

entitled to purchase the flats in question shall exercise the option and intimate to the Corporation whether they are ready and willing to purchase the particular respective flats in their possession at the price stipulated in the scheme.

(ii) Those who exercise the option within the aforesaid time limit shall be permitted to pay the purchase price in monthly instalments of Rs. 500/- and the first instalment shall be paid at the time of exercise of the option on or before November 30, 1997 and the balance purchase price shall be paid in monthly instalments payable on or before 10th day of each succeeding month and payment of all the instalments shall be completed within 10, 12, 14 and 16 months from November 30, 1997 for the purchase price of Rs. 5,000/-, Rs. 6,000/-, Rs. 7,000/- and Rs. 8,000/respectively.

(iii) Till the amount of purchase price as per the scheme is fully paid up in the aforesaid monthly instalments within the above time limit, those who exercise the aforesaid option shall continue to pay monthly rent of Rs. 42/- per month inclusive of taxes.

(iv) Those who do not exercise the option within the aforesaid time limit of November 30, 1997 or those who exercise such option but do not comply with any of the aforesaid conditions shall be liable to be proceeded against in accordance with law. They shall be liable to pay Rs. 300/per month + municipal taxes of Rs. 250/- per month and if they fail to pay such monthly amount of rent and/or taxes, the Corporation shall be at liberty to proceed against them for eviction and recovery of rent in accordance with law.

10. It is clarified that the aforesaid directions are required to be given in the peculiar facts and circumstances of these cases merely in order to see that all the allottees of the flats in question can exercise the option for purchase of the flats and looking to their difficulties in paying the purchase price, some more time is made available to them for paying the purchase price. These directions shall not be treated as a precedent. It is also clarified that these directions are applicable only to those petitioners who have already approached this Court and who have not already exercised the option to purchase. Those who have paid the purchase price

shall not be entitled to claim for refund and apply afresh in terms of the aforesaid directions.

11. The petitions are accordingly disposed of in terms of the aforesaid directions after upholding legality and validity of the scheme. Rule is made absolute to the aforesaid extent only with no order as to costs.
